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U.S. DEPARTMENT OF AGRICULTURE
BEFORE THE
HOUSE COMMITTEE ON ENERGY AND COMMERCE

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Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the Committee to describe the activities of the United States Department of Agriculture (USDA) in providing assistance to farmers and ranchers in addressing water quality, particularly as it relates to livestock operations. As Under Secretary overseeing the Natural Resources Conservation Service (NRCS), I have experienced firsthand some of the excellent conservation work that farmers, ranchers, and other private landowners are performing by working hand-in-hand with local NRCS staff and our many partners.

Through the technical and financial assistance NRCS delivers, our employees work in partnership with private landowners to take proactive steps to improve water quality and help them comply with local, State and federal regulatory requirements across the Nation.

Helping People Help the Land

For over 70 years, NRCS has been committed to working with America's private landowners through a locally led, voluntary, cooperative conservation approach. Because of this "ground-up" approach to helping people, we describe NRCS as "helping people help the land." Working closely with America's agricultural producers requires a commitment to providing high quality service resulting in improved environmental benefits and a healthier landscape.

Challenges of Applying CERCLA and EPCRA to CAFOs

While many of the initial complaints were driven by odor issues, EPA enforcement actions and the citizen suits related to air emissions from CAFOs (Concentrated Animal Feeding Operations) have been based on violation of the Clean Air Act (CAA) and the reporting requirements under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Emergency Planning and Community Right-To-Know Act (EPCRA).

Historically, CERCLA and EPCRA were implemented to address hazardous substances that when released into the environment may present substantial danger to the public health, welfare or the environment. Application of these statutes to address air emissions from CAFOs is a recent phenomenon. One difficulty for the agricultural community with

the application of these statutes to CAFOs is in determining whether CAFO air emission thresholds have been exceeded.

In the early 2000s, EPA commissioned a National Academy of Sciences (NAS) study on air emissions from animal feeding operations. This analysis was commissioned because EPA understood the limits of its scientific knowledge of air emissions from these types of operations. NAS published its report, entitled "Air Emissions From Animal Feeding Operations: Current Knowledge, Future Needs," in 2003. The most significant recommendation of the NAS study was the need to develop a process-based model of CAFOs to more accurately estimate the air quality impacts of these operations.

Prior to the issuance of the NAS study, CAFO operators/farmers approached EPA about the enforcement of environmental laws governing air emissions, and the limits of EPA's knowledge of their operations. These operators offered to participate in, and fund, a two-year study in exchange for a limited "covenant not to sue" for failure to report on-site quantities in excess of the reportable quantity. As a result of these discussions, over 2,600 CAFO operators entered into a Consent Agreement and Final Order, an administrative enforcement settlement with EPA, whereby they agreed to pay a civil penalty for violations of the CAA, CERCLA and EPCRA, and participate in and be responsible for funding a portion of the National Air Emissions Study (NAEMS) study. In exchange, EPA agreed not to bring civil enforcement actions against the participating CAFO owners/operators for past and ongoing violations of the CAA, CERCLA and EPCRA as long as they ultimately come into compliance under the terms of the Consent Agreement.

To support the conduct of the NAEMS study, EPA and USDA held a joint meeting in November 2003 at the USDA Beltsville, MD, research facility. A number of scientists, CAFO representatives and environmentalists were in attendance. In addition, staffs from USDA and EPA with air quality and agricultural experience were also in attendance. Over the 2.5 days of the meeting, a strategy for developing the testing protocol was developed. Following this strategy, multiple conference calls and meetings were held with attendees from the initial meeting to develop a scientifically sound monitoring protocol. As a result of that effort, the Consent Agreement and the monitoring protocol were published in the Federal Register.

Following publication in the Federal Register, EPA conducted sign-up opportunities and selected sites for the NAEMS study. In 2007, the state-of-the-art mobile laboratories were positioned on selected CAFOs and began data collection. It is anticipated that data collection efforts will conclude in 2009 and EPA will begin the development of their emission estimation methodology. This emission estimation method is the first step in EPA's process to develop the more comprehensive (and more accurate) estimation technique recommended by NAS – a process-based model. It is our understanding that EPA will use additional information to help in their development of the process-based model, which will occur at a later date.

It should be noted that USDA supports EPA's effort to develop a sound scientific basis for accurately determining CAFO impacts on air quality. The use of sound science to determine agricultural impacts helps to sustain a viable agricultural economy and a healthy environment.

CAFOs and the GAO Audit

As part of the audit process, GAO conducted limited interviews with agriculture and air quality experts at USDA. For some reason, GAO sought information from unidentified experts not associated with CAFO programs conducted at USDA.

Recently, USDA was sent a copy of the draft GAO report. USDA agriculture and air quality experts reviewed the draft report to determine its accuracy. Based on that review, a total of fourteen pages of comments were crafted and submitted to GAO on the draft report. These comments identified numerous incorrect statements and calculation errors that mischaracterize CAFO impacts and EPA's efforts to gather sufficient information in the NAEMS study to more accurately characterize CAFO emissions.

In general, GAO's draft report suffers from many inaccuracies, including erroneous assumptions, faulty information and uncited references. Moreover, we believe that GAO missed an important opportunity to correctly present CAFO producers as environmentally responsible citizens – a fact demonstrated by the evidence to date. We believe that there should have been more time dedicated to preparing the draft report, as well as consistent input from experts at USDA and EPA and better use of the wide variety of written materials currently available.

The draft report contains many factual errors. The following are a few examples:

- GAO states that on any one day the hog population of the five North Carolina counties referenced in their draft report is over 9 million hogs producing almost 19 million tons of manure per year. This is a factual error based on an inaccurate estimate of swine populations. The 19 million ton figure for yearly manure production is off by as much as 30 to 40 percent. According to our estimates, the actual amount of manure produced is 11.4 to 13.3 million tons per year.

- The assertion that insufficient land exists in the five county area to utilize the nutrients from the manure produced by the swine industry which is leading to water quality degradation is incorrect. The Cape Fear River system in North Carolina drains three of the largest swine producing counties in the United States that constitute over 70% of the swine production in North Carolina. The Black and South rivers, part of the Cape Fear River system, are classified by the North Carolina environmental agencies as "Outstanding Resource Water," a rating that signifies excellent water quality as defined by the North Carolina Division of Water Quality.

- The draft report indicates that "the contamination may have occurred because the hog farms are attempting to dispose of excess manure but have little available

cropland that can effectively use it." In fact, every single permitted swine operation in North Carolina has a Certified Animal Waste Management Plan and waste treatment structure that has been certified as sufficient to treat the total volume of manure produced as well as account, by land application on growing crops, for all plant available nitrogen produced by the operation.

- The GAO draft report characterizes USDA's Agricultural Air Quality Task Force as a Federal agency rather than a Federal Advisory Committee that operates under the mandate established by Congress in the 1996 FAIR Act and is governed by the Federal Advisory Committee Act. The Agricultural Air Quality Task Force (AAQTF) is a Federal Advisory Committee (not an "agency") that makes recommendations to the Secretary of Agriculture. The AAQTF cannot enter into any MOU with EPA as has been indicated in the draft GAO report.

The GAO analysis was: (1) conducted over too short a time period, (2) appears to be a poor investigation and analysis, (3) did not adequately involve agriculture and air quality experts at USDA and (4) fails to allow for inclusion of USDA's comments that would correct the errors contained in the draft report. At best, these findings represent operations as they were conducted decades in the past. The vast majority of CAFOs are very well run from an environmental standpoint.

Today, there are numerous programs at USDA that assist farmers and ranchers to ensure better management of all natural resources, including water and air quality. Below are a few examples of recent activities that we have undertaken that demonstrate our commitment to address these issues:

- In 2007, NRCS helped farmers and ranchers develop over 5,100 and apply over 4,400 Comprehensive Nutrient Management Plans (CNMPs) for livestock manure management, bringing the total CNMPs written with NRCS assistance since 2002 to 33,600 and CNMPs applied to 21,400.

- Developed United States Department of Agriculture (USDA) policy on market-based incentives and signed a Partnership Agreement with the U.S. Environmental Protection Agency (EPA) to further the market-based approach.

- Provided technical assistance to help farmers and ranchers treat over 47 million acres of working lands to improve or enhance soil quality, water quality, water management, wildlife habitat, and air quality.

- Provided conservation technical assistance to nearly 1 million customers throughout the Nation.

These activities are a direct outcome of programs supported and authorized by Congress. These programs include, but are not limited to:

- Conservation Technical Assistance (CTA) Program – a voluntary, incentive-based program of conservation activities where a producer identifies the unique resource concerns of his or her operation as a starting point and develops a conservation plan. This conservation plan is the foundation of locally-led, cooperative conservation.

- Environmental Quality Incentives Program (EQIP) - a flagship working lands conservation program. The objective of EQIP is to optimize environmental benefits. The program provides technical and financial assistance to landowners that face serious natural resource challenges in their management of cropland, grazing lands, forestland, livestock, and wildlife habitat.

  In FY 2007, over 66 percent or $520 million of EQIP funds was obligated for assisting livestock producers. Of that amount, over one-fourth ($141 million) went to confined livestock operations.

  Figure 1 provides details about the confined livestock operations which benefited from EQIP funding in FY 2007.

Figure 1

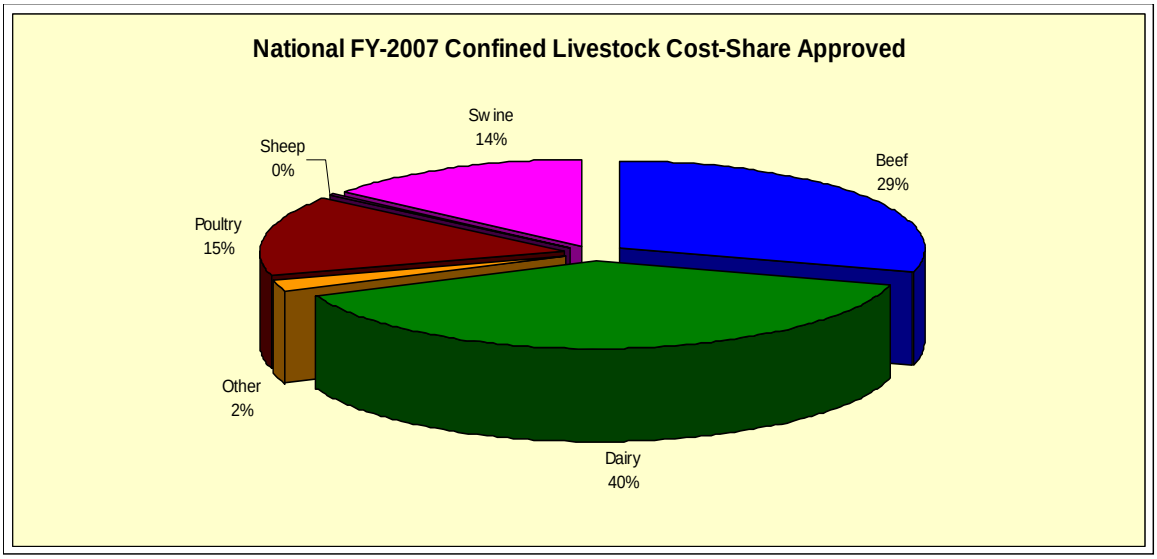
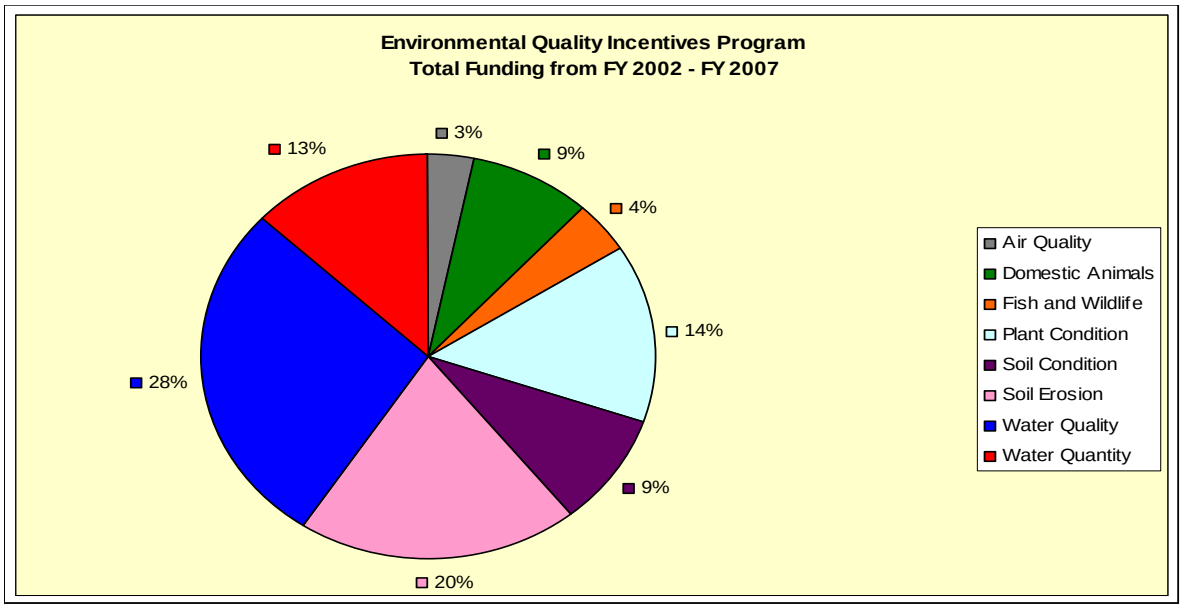


Figure 2 demonstrates the broad range of natural resource issues that EQIP addresses, including 28 percent of funding going toward water quality improvement practices.

Figure 2



- Conservation Security Program (revised as the new Conservation Stewardship Program in the 2008 Farm Bill) - a voluntary program that provides financial and technical assistance for the conservation, protection, and improvement of natural resources on tribal and private working lands. The Conservation Stewardship Program is a working lands program that offers incentives for higher levels of conservation to those producers who have already achieved progressive stewardship throughout their operations.

We have made significant progress in helping people help the land by providing technical and financial support to the Nation's agricultural producers. But while we have excellent information about our program outputs, we still are working to quantify our data on the environmental outcomes of our programs and improve our practices, where warranted.

Starting in 2003, NRCS, in collaboration with other USDA and Federal agencies, initiated the Conservation Effects Assessment Project (CEAP) to scientifically assess the environmental and related outcomes from Farm Bill conservation programs at both the national and watershed scale.

The national assessment initially focuses on water quality, soil quality, and water conservation benefits from cropland programs, including the Conservation Reserve Program. Using the National Resources Inventory data, supplemented by farmer surveys and verified by USDA computer models, CEAP will estimate national benefits from

conservation practices and programs. In addition to the cropland component, CEAP includes wetlands, grazing lands and wildlife components in the assessment of conservation benefits from Farm Bill programs To date, the CEAP analysis discussed here assessed the land application of manure (regardless of the source of the manure). It assessed nutrient losses and soil enhancements from the application of manure. Other aspects of manure management that may occur on a CAFO were not assessed.

In terms of outputs, farmers and ranchers are making important gains in conservation on working lands. They have applied conservation systems to over 57 million acres of cropland and over 108 million acres of grazing lands, and improved 56 million acres of fish and wildlife habitat. We will use the CEAP data to more precisely measure the results and actual outcomes we are helping our customers achieve.

In addition to our internal efforts to improve the environmental footprint of CAFOs, USDA and EPA staffs work collaboratively to ensure that EPA guidelines, policies and regulations are based on sound science. USDA staff work with EPA staff to provide them with a better understanding of current agricultural conservation systems and practices so that if regulation is warranted, the requirements will result in real environmental benefits. These are but a few examples of our work to ensure a healthy environment and a safe food supply for the public.

Challenges of Regulations

Mr. Chairman, USDA has enjoyed a positive working relationship with the United States Environmental Protection Agency (EPA) in recent years, working together to resolve regulatory challenges.

USDA provided extensive consultation to EPA as they developed revised rules in response to the Second Circuit decision in *Waterkeeper v. EPA*. During the course of this assistance, USDA and EPA have developed a very effective partnership. The agencies have agreed to the same approaches for nutrient management plans so that they can be used for both USDA programs and EPA regulations. EPA has become a full partner with USDA and Purdue University in the development of the Manure Management Planner software that will enable faster and more accurate production of Comprehensive Nutrient Management Plans.

EPA has also proposed to use two USDA software products in the revised rule to support a demonstration of “no discharge” from the production facility of a Concentrated Animal Feeding Operation. These software products are the Soil, Plants, Air and Water model and Agricultural Water Management model. These models are able to assess whether or not a discharge will occur from a CAFO under greater than 100-year frequency rainfall combined with a properly installed Comprehensive Nutrient Management Plan.

USDA is updating internal technical policy on Comprehensive Nutrient Management Plans so that it reflects the streamlining efforts referenced above and coordinates terms with EPA.

The messages and concerns of private agriculture producers are being heard and we have established the right kind of dialogue to ensure that both solid science and the day-to-day realities of farming operations are being heard in EPA's regulatory actions. However, I want to take a moment to express a few concerns regarding some of the assertions that have been associated with further regulatory activities.

While great strides have been made, there contiues to be a need to improve estimation of CAFO emissions so that they and potential environmental impacts are correctly characterized. USDA supports EPA's NAEMS study as a step forward to develop methods to more accurately estimate CAFO emissions. Finally, there is a great need to establish agriculturally appropriate regulatory definitions for terms such as "source," "contiguous property," "discrete facilities," and other terms used to determine the applicability of regulations. It is only through an appropriate characterization of agricultural emissions and a clear understanding of regulatory language that agricultural operations can fairly and appropriately be engaged to comply with current and future regulations. With source appropriate regulatory requirements and a clear understanding of those requirements, farmers and ranchers can continue to provide the safest, most abundant, and reasonably priced food supply while meeting the commitment to conserve our natural resources.

Summary

I am proud of the work and the conservation ethic our people exhibit day in and day out as they go about the job of achieving conservation on the ground. Through Cooperative Conservation, we have achieved a great deal of success. We are sharply focusing our efforts and will work together with our partners to continue to make improvements to water and air quality. We are demonstrating that voluntary, incentive-based conservation program work and expansion of regulatory requirements is not always necessary. I look forward to working with you, as we move ahead in this endeavor.

This concludes my statement. I will be glad to answer any questions that Members of the Subcommittee might have.